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Attorney for Petitioner

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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

VS. CRIMINAL No. 13-669

JAMAHL SIMMONS

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TO: The Honorable Judges of the United States District Court for the Eastern District of Pennsylvania.

**AMENDED/ SUPPLEMENTAL MOTION TO SUPPRESS PHYSICAL
EVIDENCE**

The evidence was obtained by the police or other persons whose conduct constituted state action in violation of the defendant's rights under the United States Constitution and the Federal Rules of Criminal Procedure for the following reasons:

1. Defendant's arrest was illegal and unconstitutional because;
 - (a) he was arrested pursuant to an arrest warrant which was not issued on the basis of probable cause and/or which was obtained pursuant to material misstatements in the affidavit;
 - (b) he was arrested on the basis of evidence tainted by prior illegal police conduct;

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2. Following the arrest of the defendant, illegal searches were made of his person, his abode, automobiles used or owned by him, as well as other locations and receptacles. Similar searches were made prior to and contemporaneous with his arrest. He did not consent to the search or seizure.

3. The said illegal searches resulted in the seizure of clothing, correspondence, reading and pictorial material, U. S. Currency and other material and items of property.

4. The seizures were the results of illegal searches carried on without legally efficacious warrants and/or without probable cause to do so, and not incident to an arrest and without the consent of the Petitioner.

5. The petitioner was subjected to an unconstitutional seizure of his person, as the stop, or other actions of the police were not based on objective reasonable suspicions or beliefs that he was involved in criminal activity.

6. A search was conducted which was illegal and unconstitutional because:

(a) it was conducted without probable cause, since the information which the police relied upon was based on conclusions which had no basis in fact;

(b) it was conducted pursuant to a search warrant which was not issued on the basis of probable cause and/or contained material misstatements in the affidavit submitted to obtain the warrant;

(c) the information relied upon by the police officer was obtained from an unreliable Ent

confidential informant;

(d) the information concerning the informant supplied by the affiant is false and the Petitioner intends to cross-examine on that point;

(e) it was conducted pursuant to a warrant that was not executed legally because before entry was made into the premises there was no reasonable effort by the police to give adequate notice of identity, authority and purpose to the occupants and/or a reasonable period of time to respond to this notice by police.

7. Any and all evidence which is the fruit of any illegal and/or unconstitutional action by the police or evidence obtained as a result of such action should be suppressed.

Specifically the search warrant and the proceeds obtained thereof, with a case number of 13-1285, regarding priority mail package number 9505500014793313000072, was illegal and unconstitutional because the warrant nor its affidavit contained probable cause and the warrant was obtained pursuant to an affidavit that contained misstatements of material facts. The allegation that this priority mail package was sent from California which is suppose to be an area known to law enforcement as a source for narcotics is not true, vague and is unsupported by any facts. Finally, the certification of canine Kirby, #K-7879A and his handler, Detective Kelliher, #22207, of the Bensalem Township Police Department is not true and is unsupported by facts. The canine's performance was tainted by an overly suggestive process that invalidates the alert given by the canine. All subsequent evidence obtained by the government regarding this package is tainted by these illegalities and is thus inadmissible.

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8. Any and all evidence which is the fruit of any illegal and/or unconstitutional action by the police or evidence obtained as a result of such action should be suppressed. Specifically the search and seizure of priority mail package #42019428950500014853301000689 for the purpose of installing an electronic tracking and entry device is illegal and unconstitutional due to the affidavit failing to have a probable cause factual basis sufficient enough to install the devices in the “subject package”. Specifically, the affidavit does not support the warrant for the search and seizure of this package. Also the certification of canine Kirby, #K-7879A and his handler, Detective Kelliher, #22207, of the Bensalem Township Police Department is not true and is unsupported by facts. . The canine’s performance was tainted by an overly suggestive process that invalidates the alert given by the canine. Additionally, this package was never intercepted by law enforcement. Therefore the warrant/order was invalid since it was not based upon an affidavit sufficiently enough to establish probable cause and due to material misstatements of fact in both the affidavit and warrant. All subsequent evidence obtained by the government regarding this package is tainted by illegalities and is inadmissible.

9. Any and all evidence which is the fruit of any illegal and/or unconstitutional action by the police or evidence obtained as a result of such action should be suppressed. Specifically the search and seizure pursuant to the search warrant with a case number of 13-1294-m for priority mail package # 9505500014853316000391 was illegally and unconstitutionally executed since it was never signed by a United States District Court Magistrate or Judge. Specifically the warrant did not contain probable cause and was
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obtained pursuant to misstatements of material facts in the affidavit of probable cause. The allegation that the package was sent from California which is an area known to law enforcement as a source for narcotics is not true and is unsupported by facts. The certification of canine Kirby, #K-7879A and his handler, Detective Kelliher, #22207, of the Bensalem Township Police Department is not true and is unsupported by facts. . The canine's performance was tainted by an overly suggestive process that invalidates the alert given by the canine. All subsequent evidence obtained by the government regarding this package is tainted by these illegalities and is thus inadmissible

10. Any and all evidence which is the fruit of any illegal and/or unconstitutional action by the police or evidence obtained as a result of such action should be suppressed. Specifically the warrant for electronic an tracking and entry device with a magistrate number of 13-1296 m is invalid due to it being tainted by the prior illegal search and seizure of priority mail package number 9505500014853316000391. That package had an unsigned warrant and that warrant was used to seize, open and search this package. Also the warrant was unsupported by an affidavit that contained probable cause and was obtained pursuant to misstatements of material facts in the affidavit of probable cause. The allegation that the package was sent from California which is an area known to law enforcement as a source for narcotics is not true and is unsupported by facts. The certification of canine Kirby, #K-7879A and his handler, Detective Kelliher, #22207, of the Bensalem Township Police Department is not true and is unsupported by facts. . The canine's performance was tainted by an overly suggestive process that invalidates the alert given by the canine. All subsequent evidence obtained by the government regarding
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this package is tainted by these illegalities and is thus inadmissible.

11. Any and all evidence which is the fruit of any illegal and/or unconstitutional action by the police or evidence obtained as a result of such action should be suppressed. Specifically the search and seizure warrant with a case number of 13-1293 m is invalid due to material misstatements of fact in the warrant and its accompanying affidavit of probable cause. It would have been simply impossible for the search warrant to have been approved by the United States District Court Magistrate in the manner it was approved based upon temporal contradictions between the warrant and postal data. Additionally, the allegation that the package was sent from California which is an area known to law enforcement as a source for narcotics is not true and is unsupported by facts. The certification of canine Kirby, #K-7879A and his handler, Detective Kelliher, #22207, of the Bensalem Township Police Department is not true and is unsupported by facts. . The canine's performance was tainted by an overly suggestive process that invalidates the alert given by the canine. All subsequent evidence obtained by the government regarding this package is tainted by these illegalities and is thus inadmissible.

12. All of the above warrants are also tainted by the fact that they are based upon material misstatements that the photographs of a person or persons, allegedly at a post office counter mailing the above packages, was identified as an image depicting the defendant. These material misstatements grossly distort the fact that no one can be identified by these photos much less the defendant. Singularly, the grave effect this has on the probable cause portion of all the affidavits invalidates all of them. These material misstatements

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are misused and form the sole connection of the defendant to all the packages within the warrants and affidavits.

13. Counsel reserves the right to supplement the allegations in this motion as may become necessary after discovery, investigation and evidence is presented at the hearing for the Motion to Suppress Evidence.

FOR THE FOREGOING REASONS, the Petitioner respectfully request that the court grant Petitioner's MOTION TO SUPPRESS PHYSICAL EVIDENCE in its entirety or its appropriate parts.

RESPECTFULLY SUBMITTED,

Robert E. H. Miller, Esq.
ROBERT E. H. MILLER, ESQUIRE
Attorney for Petitioner

DATE:_____

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Attorney for Petitioner

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UNITED STATES OF AMERICA

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JAMAHL SIMMONS

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TO: United States Department of Justice, United States Attorney, Eastern District of
Pennsylvania.

RULE

AND NOW, TO WIT, THIS DAY OF , 2014 on
consideration of the attached Motion, a rule is granted upon the United States of America
to show cause as to why the attached petition, in the above matter, should not be granted.

RULE RETURNABLE, THE DAY OF
2014, IN COURTROOM , of the UNITED STATES COURT HOUSE for
the EASTERN DISTRICT OF PENNSYLVANIA at m.

BY THE COURT;

ROBERT E. H. MILLER, ESQUIRE
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TO: United States Department of Justice, United States Attorney, Eastern District of
Pennsylvania.

VERIFICATION

I have examined this matter and from the available facts I certify that there is a proper and legal basis for the filing of this Motion, that the foregoing facts are true and correct to the best of my information, knowledge and belief and that this statement is made subject to the penalties of Law relating to unsworn falsification to authorities.

Robert F. H. Miller

Attorney for Jamahl Simmons

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